

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

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| IN RE: PHARMACEUTICAL INDUSTRY |) | MDL NO. 1456 |
| AVERAGE WHOLESALE PRICE |) | |
| LITIGATION |) | CIVIL ACTION: 01-CV-12257-PBS |
| |) | Subcategory Docket: 06-CV-11337-PBS |
| |) | |
| THIS DOCUMENT RELATES TO |) | Judge Patti B. Saris |
| |) | |
| <i>U.S. ex rel. Ven-A-Care of the Florida Keys,</i> |) | Magistrate Judge Marianne B. Bowler |
| <i>Inc. v. Abbott Laboratories, Inc., et al., No.</i> |) | |
| 06-CV-11337-PBS |) | |
| |) | |

DECLARATION OF DAVID S. TORBORG

David S. Torborg hereby declares under penalty of perjury pursuant to 28 U.S.C. § 1746 as follows:

1. I am an attorney-at-law at Jones Day, counsel for Defendant Abbott Laboratories, Inc., (“Abbott”) and am admitted to practice before the courts of the District of Columbia, and *pro hac vice* before this Court.

2. This declaration is submitted pursuant to Federal Rule of Civil Procedure 56(f) in support of Abbott’s motion for partial summary judgment and its Motion *in Limine* to Exclude Certain Opinions Proffered by Plaintiffs’ Expert Mark G. Duggan, Ph.D.

3. The basis for my knowledge is my review of the files maintained by Jones Day as part of its representation of Abbott, including the documents attached hereto, and my own personal knowledge of the facts and circumstances set forth herein.

4. Attached hereto as Exhibit A is a true and correct redacted copy of the Complaint in Civil Action No. 95-1354-CIV-GOLD, filed under seal in the United States District Court for the Southern District of Florida on or around June 23, 1995, by Relator Ven-A-Care of the Florida Keys, Inc. (“Ven-A-Care”).

5. Attached hereto as Exhibit B is a true and correct copy of the United States' First Amended Complaint in MDL No. 1456, Civil Action No. 01-12257-PBS, filed in the United States District Court for the District of Massachusetts on November 7, 2007.

6. Attached hereto as Exhibit C is a true and correct copy of excerpts from the July 20, 2007 hearing transcript of proceedings before United States Magistrate Judge Marianne B. Bowler in the above-captioned matter.

7. Attached hereto as Exhibit D is a true and correct copy of a sign-in sheet titled "Vena Care Meeting," dated September 14, 1995, and a hand-out from the meeting. (VAC MDL 86162-75.)

8. Attached hereto as Exhibit E is a true and correct copy of excerpts from the deposition of Zachary T. Bentley, dated March 5, 2008.

9. Attached hereto as Exhibit F is a true and correct copy of excerpts of a letter and attachments sent by Zachary Bentley and T. Mark Jones to HCFA Administrator Dr. Bruce Vladeck, dated October 2, 1996. (R2-039406-40545.)

10. Attached hereto as Exhibit G is a true and correct copy of a letter sent by Zachary Bentley and T. Mark Jones to HHS Inspector June Gibbs Brown, Attorney General Janet Reno, and Secretary of the United States Department of Health and Human Services Donna Shalala, dated January 5, 1998. (HHD009-0045-49.)

11. Attached hereto as Exhibit H is a true and correct copy of a letter sent by Zachary Bentley and T. Mark Jones to Congressman Fortney H. ("Pete") Stark, dated January 22, 1998. (VAC MDL 43168-70.)

12. Attached hereto as Exhibit I is a true and correct copy of excerpts from the deposition of T. Mark Jones, dated March 19, 2008.

13. Attached hereto as Exhibit J is a true and correct copy of the Notice of Dismissing and Adding Defendants in Civil Action No. 95-1354-CIV-GOLD, filed under seal in the United States District Court for the Southern District of Florida on or around March 28, 1997, by Relator Ven-A-Care.

14. Attached hereto as Exhibit K is a true and correct redacted copy of the Amended Complaint in Civil Action No. 95-1354-CIV-GOLD, filed under seal in the United States District Court for the Southern District of Florida on or around March 28, 1997, by Relator Ven-A-Care.

15. Attached hereto as Exhibit L is a true and correct copy of excerpts from the deposition of T. Mark Jones, dated March 18, 2008.

16. Attached hereto as Exhibit M is a true and correct redacted copy of the Second Amended Complaint in Civil Action No. 95-1354-CIV-MARCUS, filed under seal in the United States District Court for the Southern District of Florida on or around August 12, 1997, by Relator Ven-A-Care.

17. Attached hereto as Exhibit N is a true and correct redacted copy of the Third Amended Complaint in Civil Action No. 95-1354-CIV-GOLD, filed under seal in the United States District Court for the Southern District of Florida on or around December 9, 1999, by Relator Ven-A-Care.

18. Attached hereto as Exhibit O is a true and correct redacted copy of the Fourth Amended Complaint in Civil Action No. 95-1354-CIV-GOLD, filed under seal in the United States District Court for the Southern District of Florida on or around December 11, 2002, by Relator Ven-A-Care.

19. Attached hereto as Exhibit P is a true and correct copy of The Government's Notice of Election to Intervene in Part and Decline to Intervene in Part in Civil Action No. 95-

1354-CIV-GOLD, filed under seal in the United States District Court for the Southern District of Florida on March 17, 2006, by the United States.

20. Attached hereto as Exhibit Q is a true and correct copy of the United States' Complaint in Civil Action No. 95-1354-CIV-GOLD, filed under seal in the United States District Court for the Southern District of Florida on March 17, 2006.

21. Attached hereto as Exhibit R is a true and correct copy of excerpts from the deposition of David Campana dated August 19-21, 2008.

22. Attached hereto as Exhibit S is a true and correct copy of excerpts from the deposition of Mary J. Terrebonne dated March 31, 2008.

23. Attached hereto as Exhibit T is a true and correct copy of January-February 1987 issue of the *Medicaid Pharmacy Bulletin*. (HHC002-0388-99.)

24. Attached hereto as Exhibit U is a true and correct copy of excerpts from the deposition of Cynthia Denemark dated December 18, 2008.

25. Attached hereto as Exhibit V is a true and correct copy of excerpts from the deposition of Joseph Fine dated January 7, 2009.

26. Attached hereto as Exhibit W is a true and correct copy of excerpts of a 2001 report by Myers and Stauffer entitled *A Survey of Dispensing and Acquisition Costs of Pharmaceuticals in the State of Louisiana*. (KY AWP KRF 03164-3272.)

27. Attached hereto as Exhibit X is a true and correct copy of excerpts of a 2001 report by Myers and Stauffer entitled *A Survey of Dispensing Costs of Pharmaceuticals in the Commonwealth of Kentucky*.

28. Attached hereto as Exhibit Y is a true and correct copy of excerpts of a 2002 report by Myers and Stauffer entitled *Study of Medi-Cal Pharmacy Reimbursement*.

29. Attached hereto as Exhibit Z is a true and correct copy of excerpts of an October 2003 report by Myers and Stauffer entitled *Survey of Dispensing and Acquisition Costs of Pharmaceuticals in the Commonwealth of Kentucky*.

30. Attached hereto as Exhibit AA is a true and correct copy of excerpts of a September 1999 report by Myers and Stauffer entitled *Survey of Dispensing Costs in the State of Kansas*.

31. Attached hereto as Exhibit AB is a true and correct copy of excerpts of a June 2001 report by Myers and Stauffer entitled *Survey of Dispensing Costs in the State of Arkansas*, June 2001.

32. Attached hereto as Exhibit AC is a true and correct copy of excerpts of a December 2007 report by Myers and Stauffer entitled *Survey of Dispensing and Acquisition Costs of Pharmaceuticals in the State of California*.

33. Attached hereto as Exhibit AD is a true and correct copy of excerpts of an August 2005 report by Myers and Stauffer entitled *Analysis of Pharmacy Dispensing Fees for the Indiana Medicaid Program*.

34. Attached hereto as Exhibit AE is a true and correct copy of excerpts of an August 2002 report by Myers and Stauffer entitled *Determining the Cost of Dispensing Pharmaceutical Prescriptions for the Texas Vendor Drug Program*.

35. Attached hereto as Exhibit AF is a true and correct copy of excerpts from the deposition of Cynthia Denemark dated December 9, 2008.

36. Attached hereto as Exhibit AG is a true and correct copy of excerpts from the deposition of Susan McCann dated October 3, 2007 and November 7, 2007.

37. Attached hereto as Exhibit AH is a true and correct copy of excerpts from the deposition of Cody Wiberg dated March 14, 2008.

38. Attached hereto as Exhibit AI is a true and correct copy of excerpts from the deposition of Benny Ridout dated December 5, 2008.

39. Attached hereto as Exhibit AJ is a true and correct copy of excerpts from the deposition of H. Leo Sullivan dated March 12, 2008.

40. Attached hereto as Exhibit AK is a true and correct copy of excerpts from the deposition of Robert Reid dated December 15, 2008.

41. Attached hereto as Exhibit AL is a true and correct copy of excerpts from the deposition of Jerry Wells dated December 15, 2008.

42. Attached hereto as Exhibit AM is a true and correct copy of excerpts from the deposition of Gary Cheloha dated December 2, 2008.

43. Attached hereto as Exhibit AN is a true and correct copy of a facsimile sent by Mary E. Riordan to Bob Niemann and Larry Reed dated April 27, 1999, which reproduced a Facsimile Transmission Record from T. Reed Stephens dated April 26, 1999 and a letter from Congressman Pete Stark to HCFA Administrator Nancy-Ann Min DeParle dated April 21, 1999. (HHC001-0743-46.)

44. Attached hereto as Exhibit AO is a true and correct copy of a letter sent by Patrick E. Lupenetti to "Medicaid Pharmacy Director" in Cheyenne, Wyoming dated February 16, 2000. (HHD006-0109-0111.)

45. Attached hereto as Exhibit AP is a true and correct copy of a September 8, 2000 memorandum by the Department of Health and Human Services Health Care Financing

Administration with the subject line “An Additional Source of Average Wholesale Price Data in Pricing Drugs and Biologicals Covered by the Medicare Program.” (AWP010-0875-96.)

46. Attached hereto as Exhibit AQ is a true and correct copy of excerpts from the deposition of Robert Berenson, dated December 18, 2007.

47. Attached hereto as Exhibit AR is a true and correct copy of a September 2001 report by the Department of Health and Human Services Office of Inspector General entitled *Medicaid’s Use of Revised Wholesale Prices*. (OEI-03-01-00010.)

48. Attached hereto as Exhibit AS is a true and correct copy of schedules by Myers and Stauffer entitled *Medicaid Pharmacy Reimbursement Methodology* for each state and the District of Columbia, prepared to assist the United States’ expert witness Mark G. Duggan, Ph.D., in connection with the above-captioned matter.

49. Attached hereto as Exhibit AT is a true and correct copy of excerpts of a June 2002 performance audit by Missouri’s Office of State Auditor entitled *Cost Containment for State Drug Expenditures*.

50. Attached hereto as Exhibit AU is a true and correct copy of a June 5, 1991 proposed rule published by HCFA at 56 Fed. Reg. 25792.

51. Attached hereto as Exhibit AV is a true and correct copy of a payment regulation implemented by HCFA at 42 C.F.R. § 405.517.

52. Attached hereto as Exhibit AW is a true and correct copy of excerpts of the Balanced Budget Act of 1997.

53. Attached hereto as Exhibit AX is a true and correct copy of a facsimile cover sheet sent by Maureen Adolph Furletti to Rob Vito, dated March 2, 1998, containing excerpts from the proposed Fiscal Year 1998 budget and Fiscal Year 1999 budget. (HHD042-0319-23.)

54. Attached hereto as Exhibit AY is a true and correct copy of excerpts from the deposition of Nancy-Ann DeParle dated May 18, 2007.

55. Attached hereto as Exhibit AZ is a true and correct copy of a letter sent by Bill Thomas and Bill Archer to Nancy DeParle dated February 13, 1998.

56. Attached hereto as Exhibit BA is a true and correct copy of a December 1998 Program Memorandum by CMS with the subject line "Implementation of the New Payment Limit for Drugs and Biologicals." (HHD062-1211-12.)

57. Attached hereto as Exhibit BB is a true and correct copy of an undated memorandum from Michael Hash to Kevin Thrum with the "re" line "Medicare Payments for Drugs Using Department of Justice Data – INFORMATION." (HHD340-0031-0034.)

58. Attached hereto as Exhibit BC is a true and correct copy of a letter from Justin Draycott to David Torborg dated March 13, 2009.

59. Attached hereto as Exhibit BD is a true and correct copy of a May 3, 2001 Program Memorandum from HCFA with the subject line "Implementation of Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (DIPA) Requirements for Payment Allowance of Drugs and Biologicals Covered by Medicare." (HHC014-0207.)

60. Attached hereto as Exhibit BE is a true and correct copy of excerpts of the Medicare Modernization Act of 2003.

61. Attached hereto as Exhibit BF is a true and correct copy of excerpts from the deposition of Thomas Scully dated May 15, 2007 and July 13, 2007.

62. Attached hereto as Exhibit BG is a true and correct copy of excerpts from the deposition of Bruce Vladeck dated May 4, 2007 and June 21, 2007.

63. Attached hereto as Exhibit BH is a true and correct copy of excerpts from the deposition of Robert Niemann dated September 14, 2007 and October 11, 2007.

64. Attached hereto as Exhibit BI is a true and correct copy of excerpts from the deposition of Charles Booth, dated April 23, 2007 and October 29, 2007.

65. Attached hereto as Exhibit BJ is a true and correct copy of excerpts from the deposition of Kathleen Buto, dated September 12-13, 2007.

66. Attached hereto as Exhibit BK is a true and correct copy of excerpts from the deposition of Elizabeth Richter, dated December 7, 2007.

67. Attached hereto as Exhibit BL is a true and correct copy of excerpts from the deposition of Robert Vito, dated June 19-20, 2007.

68. Attached hereto as Exhibit BM is a true and correct copy of excerpts from the deposition of David Tawes, dated April 24, 2007.

69. Attached hereto as Exhibit BN is a true and correct copy of excerpts from the deposition of Larry Reed, dated September 26, 2007.

70. Attached hereto as Exhibit BO is a true and correct copy of excerpts from the deposition of Linda Ragone, dated April 17-18, 2007.

71. Attached hereto as Exhibit BP is a true and correct copy of excerpts from the deposition of Rena Clark, dated February 8, 2008.

72. Attached hereto as Exhibit BQ is a true and correct copy of excerpts from the deposition of Sue Gaston, dated January 24, 2008 and May 19, 2008.

73. Attached hereto as Exhibit BR is a true and correct copy of a July 5, 1987 article in the *Lexington Herald-Leader* entitled "Drug Industry Overcharging Medicaid Prescriptions Cost Taxpayers Millions of Extra Dollars."

74. Attached hereto as Exhibit BS is a true and correct copy of an October 1992 memorandum from the Office of Inspector General entitled “Cost of Dialysis-Related Drugs.” (HHD200-1431.)

75. Attached hereto as Exhibit BT is a true and correct copy of an OIG work paper in connection with a 1992 OIG report. (HHD200-0016.)

76. Attached hereto as Exhibit BU is a true and correct copy of an article from the July 1980 edition of Modern Healthcare entitled “Hospitals Play Into Hands of Vendors Who Try to Break Group Contracts.”

77. Attached hereto as Exhibit BV is a true and correct copy of excerpts from the deposition of Paul Chesser, dated June 24, 2008 and October 28, 2008.

78. Attached hereto as Exhibit BW is a true and correct copy of a 1997 OIG report entitled *Medicaid Pharmacy – Actual Acquisition Cost of Generic Prescription Drug Products*. (HHD014-0443-60.)

79. Attached hereto as Exhibit BX is a true and correct copy of work papers analyzed by Office of Inspector General official Paul Chesser in connection with a 1994 OIG study “estimate of the discount below AWP at which pharmacies purchase generic drugs.”

80. Attached hereto as Exhibit BY is a true and correct copy of a Record of Discussion dated August 30-31, 1994, with “participants” from OIG and Medicaid Pharmacy Reps, the “place” listed as Richmond, Virginia and the “purpose” listed as “To discuss and plan our nationwide review of the difference between the invoice price for drugs and AWP, for Medicaid pharmacy providers.” (HHD022-0201-02.)

81. Attached hereto as Exhibit BZ is a true and correct copy of excerpts from the deposition of Ben Jackson, dated December 12, 2008.

82. Attached hereto as Exhibit CA is a true and correct copy of excerpts from the deposition of John Young, dated December 3, 2008.

83. Attached hereto as Exhibit CB is a true and correct copy of excerpts from the deposition of Sandra Kramer, dated March 25, 2008.

84. Attached hereto as Exhibit CC is a true and correct copy of excerpts from the deposition of Suzette Bridges, dated December 10-11, 2008.

85. Attached hereto as Exhibit CD is a true and correct copy of excerpts from the deposition of Kevin Gorospe, dated March 19, 2008 and September 22, 2008.

86. Attached hereto as Exhibit CE is a true and correct copy of excerpts from the deposition of James Parker, dated November 18, 2008.

87. Attached hereto as Exhibit CF is a true and correct copy of the United States' Memorandum in Support of the United States' Ex Parte Motion for an Extension of Time, in Civil Action No. 95-1354-CIV-MARCUS, filed under seal in the United States District Court for the Southern District of Florida on August 18, 1995. (ABT008-211-15.)

88. Attached hereto as Exhibit CG is a true and correct copy of the United States of America's Motion for Extension of Seal on Qui Tam Complaint and Related Filings and for Extension of the Government's Evaluatory Period, in Civil Action No. 95-1354-CIV-MARCUS, filed under seal in the United States District Court for the Southern District of Florida on November 27, 1995. (ABT008-0199-205.)

89. Attached hereto as Exhibit CH is a true and correct copy of the United States of America's Motion for Extension of Seal on Qui Tam Complaint and Related Filings and for Extension of the Government's Evaluatory Period and Memorandum of Law, in Civil Action No.

95-1354-CIV-MARCUS, filed under seal in the United States District Court for the Southern District of Florida on May 10, 1996. (ABT008-0192-95.)

90. Attached hereto as Exhibit CI is a true and correct copy of the United States of America's Motion for Extension of Seal on Qui Tam Complaint and Related Filings and for Extension of the Government's Evaluatory Period and Memorandum of Law and Request for Status Conference, in Civil Action No. 95-1354-CIV-MARCUS, filed under seal in the United States District Court for the Southern District of Florida on July 24, 1996. (ABT008-0180-83.)

91. Attached hereto as Exhibit CJ is a true and correct copy of the United States of America's Motion for Extension of Seal on Qui Tam Complaint and Related Filings and for Extension of the Government's Evaluatory Period Through March 21, 1997 and Memorandum of Law, in Civil Action No. 95-1354-CIV-MARCUS, filed under seal in the United States District Court for the Southern District of Florida on November 21, 1996. (ABT008-0165-68.)

92. Attached hereto as Exhibit CK is a true and correct copy of the United States' Motion for Extension of Seal on Qui Tam Complaint Through May 21, 1997 and for Partial Lifting of the Seal and Memorandum of Law, in Civil Action No. 95-1354-CIV-MARCUS, filed under seal in the United States District Court for the Southern District of Florida on March 24, 1997. (ABT008-0154-56.)

93. Attached hereto as Exhibit CL is a true and correct copy of the United States' Unopposed Motion for Extension of Seal on Qui Tam Complaint Through January 15, 1998 and for Partial Lifting of the Seal and Memorandum of Law, in Civil Action No. 95-1354-CIV-MARCUS, filed under seal in the United States District Court for the Southern District of Florida on October 17, 1997. (ABT008-0339-43.)

94. Attached hereto as Exhibit CM is a true and correct copy of the United States' Unopposed Application for Extension of Seal on Qui Tam Complaint, in Civil Action No. 95-1354-CIV-KEHOE, filed under seal in the United States District Court for the Southern District of Florida on January 15, 1998. (ABT008-1118-20.)

95. Attached hereto as Exhibit CN is a true and correct copy of the United States' Unopposed Application for Extension of Time to Elect Whether to Intervene in *Qui Tam* Action and Memorandum of Law, in Civil Action No. 95-1354-CIV-KEHOE, filed under seal in the United States District Court for the Southern District of Florida on November 17, 1998. (ABT008-1061-65.)

96. Attached hereto as Exhibit CO is a true and correct copy of the United States' Unopposed Application for Extension of Time to Elect Whether to Intervene in *Qui Tam* Action, in Civil Action No. 95-1354-CIV-GOLD, filed under seal in the United States District Court for the Southern District of Florida on April 22, 1999. (ABT008-1034-36.)

97. Attached hereto as Exhibit CP is a true and correct copy of the United States' Unopposed Application for Extension of Time to Elect Whether to Intervene in *Qui Tam* Action, in Civil Action No. 95-1354-CIV-GOLD, filed under seal in the United States District Court for the Southern District of Florida on August 26, 1999. (ABT008-1020-23.)

98. Attached hereto as Exhibit CQ is a true and correct copy of the United States' Unopposed Application for Extension of Time to Elect Whether to Intervene in *Qui Tam* Action, in Civil Action No. 95-1354-CIV-GOLD, filed under seal in the United States District Court for the Southern District of Florida on November 23, 1999. (ABT008-1008-10.)

99. Attached hereto as Exhibit CR is a true and correct copy of the United States' Unopposed Application for Extension of Time to Elect Whether to Intervene in *Qui Tam* Action,

in Civil Action No. 95-1354-CIV-GOLD, filed under seal in the United States District Court for the Southern District of Florida on March 23, 2000. (ABT008-1629-33.)

100. Attached hereto as Exhibit CS is a true and correct copy of the United States' Unopposed Application for Extension of Time to Elect Whether to Intervene in *Qui Tam* Action and Memorandum of Law, in Civil Action No. 95-1354-CIV-GOLD, filed under seal in the United States District Court for the Southern District of Florida on July 21, 2000. (ABT008-1611-15.)

101. Attached hereto as Exhibit CT is a true and correct copy of the United States' Unopposed Application for Extension of Time to Elect Whether to Intervene in *Qui Tam* Action and Memorandum of Law, in Civil Action No. 95-1354-CIV-GOLD, filed under seal in the United States District Court for the Southern District of Florida on January 17, 2001. (ABT008-1570-76.)

102. Attached hereto as Exhibit CU is a true and correct copy of the United States' Unopposed Application for Extension of Time to Elect Whether to Intervene in *Qui Tam* Action and Memorandum of Law, in Civil Action No. 95-1354-CIV-GOLD, filed under seal in the United States District Court for the Southern District of Florida on July 27, 2001.

103. Attached hereto as Exhibit CV is a true and correct copy of the United States' Unopposed Application for Extension of Time to Elect Whether to Intervene in *Qui Tam* Action and Memorandum of Law, in Civil Action No. 95-1354-CIV-GOLD, filed under seal in the United States District Court for the Southern District of Florida on October 26, 2001. (ABT008-1544-49.)

104. Attached hereto as Exhibit CW is a true and correct copy of the United States' Agreed Application for Extension of Time to Elect Whether to Intervene in *Qui Tam* Action and

Memorandum of Law, in Civil Action No. 95-1354-CIV-GOLD, filed under seal in the United States District Court for the Southern District of Florida on February 21, 2002. (ABT008-1509-14.)

105. Attached hereto as Exhibit CX is a true and correct copy of the United States' Application for Extension of Time to Elect Whether to Intervene in *Qui Tam* Action and Memorandum of Law, in Civil Action No. 95-1354-CIV-GOLD, filed under seal in the United States District Court for the Southern District of Florida on June 24, 2002. (ABT008-1499-05.)

106. Attached hereto as Exhibit CY is a true and correct copy of the United States' Application for Extension of Time to Elect Whether to Intervene in *Qui Tam* Action and Memorandum of Law, in Civil Action No. 95-1354-CIV-GOLD, filed under seal in the United States District Court for the Southern District of Florida on October 22, 2002. (ABT008-1485-91.)

107. Attached hereto as Exhibit CZ is a true and correct copy of the United States of America's Motion for Extension of Seal on Qui Tam Complaint and Related Filings and for Extension of the Government's Evaluatory Period, in Civil Action No. 95-1354-CIV-MARCUS, filed under seal in the United States District Court for the Southern District of Florida on August 18, 1995. (ABT008-0217-18.)

108. Attached hereto as Exhibit DA is a true and correct copy of the Declaration of Mark A. Levine, executed March 22, 1996 and attached to the United States of America's Motion for Extension of Seal on Qui Tam Complaint and Related Filings and for Extension of the Government's Evaluatory Period and Memorandum of Law, in Civil Action No. 95-1354-CIV-MARCUS, filed under seal in the United States District Court for the Southern District of Florida in May 1996. (ABT008-0187-90.)

109. Attached hereto as Exhibit DB is a true and correct copy of the Declaration of Assistant U.S. Attorney Mark A. Lavine in Support of Extension of Seal Through March 21, 1997, in Civil Action No. 95-1354-CIV-MARCUS, filed under seal in the United States District Court for the Southern District of Florida on November 21, 1996. (ABT008-0160-63.)

110. Attached hereto as Exhibit DC is a true and correct copy of the Declaration of Assistant U.S. Attorney Mark A. Lavine in Support of Extension of Seal Through May 21, 1997 and Partial Lifting of Seal, in Civil Action No. 95-1354-CIV-MARCUS, filed under seal in the United States District Court for the Southern District of Florida on March 24, 1997. (ABT008-0147-52.)

111. Attached hereto as Exhibit DD is a true and correct copy of the United States Agreed Motion for Partial Lifting of the Seal to Disclose to State Attorneys General and Memorandum of Law, in Civil Action No. 95-1354-CIV-MARCUS, filed under seal in the United States District Court for the Southern District of Florida on May 7, 1997. (ABT008-0659-64.)

112. Attached hereto as Exhibit DE is a true and correct copy of the United States' Memorandum in Support of its Unopposed Request for a Ninety Day Extension of Time to Elect Whether to Intervene, in Civil Action No. 95-1354-CIV-MARCUS, filed under seal in the United States District Court for the Southern District of Florida on May 16, 1997. (ABT008-642-46.)

113. Attached hereto as Exhibit DF is a true and correct copy of the United States' Status Report, in Civil Action No. 95-1354-CIV-MARCUS, filed under seal in the United States District Court for the Southern District of Florida on August 20, 1997. (ABT008-0354-58.)

114. Attached hereto as Exhibit DG is a true and correct copy of the Declaration of T. Reed Stephens in Support of United States' Unopposed Application for Extension of Time to Elect Whether to Intervene in *Qui Tam* Action, in Civil Action No. 95-1354-CIV-KEHOE, filed under seal in the United States District Court for the Southern District of Florida on November 17, 1998. (ABT008-1066-76.)

115. Attached hereto as Exhibit DH is a true and correct copy of the Declaration of T. Reed Stephens in Support of United States' Unopposed Application for Extension of Time to Elect Whether to Intervene in *Qui Tam* Action, in Civil Action No. 95-1354-CIV-GOLD, filed under seal in the United States District Court for the Southern District of Florida on April 22, 1999. (ABT008-1038-43.)

116. Attached hereto as Exhibit DI is a true and correct copy of the United States' Unopposed Application for Extension of Time to Elect Whether to Intervene in *Qui Tam* Action and Memorandum of Law, in Civil Action No. 95-1354-CIV-GOLD, filed under seal in the United States District Court for the Southern District of Florida on April 17, 2001. (ABT008-1562-68.)

117. Attached hereto as Exhibit DJ is a true and correct copy of the Declaration of Mark A. Levine in Support of United States' Unopposed Application for Extension of Time to Elect Whether to Intervene in *Qui Tam* Action, in Civil Action No. 95-1354-CIV-GOLD, filed under seal in the United States District Court for the Southern District of Florida on November 23, 1999. (ABT008-1012-16.)

118. Attached hereto as Exhibit DK is a true and correct copy of the Joint Status Report of the United States and the Relator, Joint Application to Extend Seal and Intervention Period for Certain Defendants, in Civil Action No. 95-1354-CIV-GOLD, filed under seal in the

United States District Court for the Southern District of Florida on March 21, 2003. (ABT008-1943-53.)

119. Attached hereto as Exhibit DL is a true and correct copy of the Joint Status Report of the United States and the Relator, Joint Application to Extend Seal and Intervention Period for Certain Defendants, in Civil Action No. 95-1354-CIV-GOLD, filed under seal in the United States District Court for the Southern District of Florida on August 21, 2003. (ABT008-1838-44.)

120. Attached hereto as Exhibit DM is a true and correct copy of the Joint Status Report of the United States and the Relator, Joint Application to Extend Seal and Intervention Period for Certain Defendants, in Civil Action No. 95-1354-CIV-GOLD, filed under seal in the United States District Court for the Southern District of Florida on December 19, 2003. (ABT008-1821-26.)

121. Attached hereto as Exhibit DN is a true and correct copy of the Joint Status Report of the United States and the Relator, Joint Application to Extend Seal and Intervention Period for Certain Defendants, in Civil Action No. 95-1354-CIV-GOLD, filed under seal in the United States District Court for the Southern District of Florida on April 22, 2004. (ABT008-1810-16.)

122. Attached hereto as Exhibit DO is a true and correct copy of the Joint Status Report of the United States and the Relator, Joint Application to Extend Seal and Intervention Period for Certain Defendants, in Civil Action No. 95-1354-CIV-GOLD, filed under seal in the United States District Court for the Southern District of Florida on September 24, 2004. (ABT008-1798-1804.)

123. Attached hereto as Exhibit DP is a true and correct copy of the Joint Status Report of the United States and the Relator, Joint Application to Extend Seal and Intervention Period for Certain Defendants, in Civil Action No. 95-1354-CIV-GOLD, filed under seal in the United States District Court for the Southern District of Florida on March 24, 2005. (ABT008-2385-91.)

124. Attached hereto as Exhibit DQ is a true and correct copy of the Joint Status Report of the United States and the Relator, Joint Application to Extend Seal and Intervention Period for Certain Defendants, in Civil Action No. 95-1354-CIV-GOLD, filed under seal in the United States District Court for the Southern District of Florida on July 25, 2005. (ABT008-2385-91.)

125. Attached hereto as Exhibit DR is a true and correct copy of Plaintiff's Rule 26(a)(1) Disclosures, filed August 9, 2006, in the above-captioned matter.

126. Attached hereto as Exhibit DS is a true and correct copy of the United States' Objections and Responses to Defendant Abbott's First Set of Interrogatories, filed December 4, 2006 in the above-captioned matter.

127. Attached hereto as Exhibit DT is a true and correct copy of the expert report of Mark G. Duggan, Ph.D., served by the Plaintiffs in the above-captioned matter on June 19, 2008.

128. Attached hereto as Exhibit DU is a true and correct copy of excerpts from the deposition of Mark G. Duggan, Ph.D., dated July 14-15, 2008; July 25, 2008; and February 17, 2009.

129. Attached hereto as Exhibit DV is a true and correct copy of the supplemental expert report of Mark G. Duggan, Ph.D., served by the Plaintiffs in the above-captioned matter on January 23, 2009.

130. Attached hereto as Exhibit DW is a true and correct copy of the rebuttal report of Mark G. Duggan, Ph.D. dated April 23, 2009.

131. Attached hereto as Exhibit DX is a true and correct copy of excerpts from the rebuttal deposition of Mark G. Duggan, Ph.D. dated May 19, 2009.

132. Attached hereto as Exhibit DY is a true and correct copy of excerpts from the CMS Manual System, Publication 100-08, Medicare Program Integrity, Transmittal 114, *Change in Statistical Sampling Instructions*.

133. Attached hereto as Exhibit DZ is a true and correct copy of excerpts from the March 21, 2003 CMS Program Memorandum Carriers, Transmittal B-03-022, *Use of Statistical Sampling for Overpayment Estimation When Performing Administrative Reviews of Part B Claims*.

134. Attached hereto as Exhibit EA is a true and correct copy of excerpts from a November 1997 publication by the National Pharmaceutical Council entitled *Pharmaceutical Benefits Under State Medicaid Assistance Programs*.

135. Attached hereto as Exhibit EB is a true and correct copy of an e-mail exchange and attached spreadsheet between consultant Ian Dew and Kris Knerr from Myers & Stauffer, regarding Medicaid claims data to be used by Mark G. Duggan, Ph.D., in connection with the above-titled litigation. (EXP USABT-DUG 147477-84.)

136. Attached hereto as Exhibit EC is a true and correct copy of an e-mail by Mark Trovalli memorializing a conference call with state Medicaid officials, consultant Ian Dew, and Department of Justice Attorney Pat Ormond regarding "Release of DPW Pharmacy Data." (Abbott Ex. 1117.)

137. Attached hereto as Exhibit ED is a true and correct copy of a document entitled “State Plan Under Title XIX of the Social Security Act. State: Commonwealth of Pennsylvania. Methods and Standards for Establishing Payment Rates – Other Types of Care” with an effective date of October 1, 1995 and an approval date of May 7, 1996. (HHC007-0979-80.)

138. Attached hereto as Exhibit EE is a true and correct copy of an excerpt of the Hearst Corporation’s National Drug Data File (“NDDF”) User Manual, Appendix Q, entitled *BaseLine Price*. (TX-ABT_00013723-32.)

139. Attached hereto as Exhibit EF is a true and correct copy of excerpts from First Databank’s *Blue Book* (1995 ed.) (FDB-AWP 27037, 27039, 27487.)

140. Attached hereto as Exhibit EG is a true and correct copy of an August 14, 2007 e-mail from David S. Torborg to counsel for the Department of Justice in the above-captioned matter with subject line “Materials from Maryland subpoena.”

141. Attached hereto as Exhibit EH is a true and correct copy of an e-mail exchange from August 16, 2007 through August 20, 2007, between Mark G. Duggan, Ph.D. and Department of Justice attorney George Henderson with subject line “AWP litigation.” (EXP USABT-DUG 057015-16.)

142. Attached hereto as Exhibit EI is a true and correct copy of a July 25, 1995 memorandum from the State of Maryland Medical Care Policy Administration, Department of Health and Mental Hygiene, with a re: line of “New Interchangeable Drug Cost (IDC) List.” (MD0020381.)

143. Attached hereto as Exhibit EJ is a true and correct copy of excerpts from the deposition of Frank Tetkoski, dated December 11, 2008.

144. Attached hereto as Exhibit EK is a true and correct copy of a document produced in discovery by the State of Maryland from the Maryland Medicaid Program entitled “Cumulative List of Interchangeable Drug Costs Dec. 21, 1994- Mar 17, 1999.” (MD0021454-97);

145. Attached hereto as Exhibit EL is a true and correct copy of a November 21, 2003 printout, produced in discovery by the State of Maryland, titled “PDD File—Drug Display Screen,” displaying Estimated Acquisition Cost for an Abbot sodium chloride solution. (MD0005721.)

146. Attached hereto as Exhibit EM is a true and correct copy of a United States’ privilege log in the above-captioned matter, regarding correspondence between the DOJ and Medicare carriers.

147. Attached hereto as Exhibit EN is a true and correct copy of the expert report of James W. Hughes, served by Abbott in the above-captioned matter on March 6, 2009.

148. Attached hereto as Exhibit EO is a true and correct copy of the expert report of Steven J. Young, served by Abbott in the above-captioned matter on March 6, 2009.

149. Attached hereto as Exhibit EP is a true and correct copy of an e-mail exchange from May 5, 2008 through May 12, 2008 between Minnesota Medicaid employee Jarvis Jackson and Myers & Stauffer employee Judith Becherer with subject line “Medicaid Pharmacy Pricing.” (EXP USABT-DUG 070518-20.)

150. Attached hereto as Exhibit EQ is a true and correct copy of excerpts from Mark G. Duggan, Ph.D.’s back-up files for Illinois (STATA log).

151. Attached hereto as Exhibit ER is a true and correct copy of a September 2004 report by the Office of Inspector General entitled *Variation in State Medicaid Drug Prices* (OEI-05-02-00681.)

152. Attached hereto as Exhibit ES is a true and correct copy of a November 21, 1994 Policy Memorandum from Kansas Medicaid regarding “Pharmacy Parenteral Vehicle Solution & Irrigation Solution Reimbursement Reduction.” (VAC MDL 77735-36.)

153. Attached hereto as Exhibit ET is a true and correct copy of an April 2001 document titled “The Amber Sheet” prepared by the Utah State Medicaid DUR Committee. (HHC014-0833-34.)

154. Attached hereto as Exhibit EU is a true and correct copy of the information contained in the claim assigned the Steck_ID number 11148089, a Utah claim adjudicated on September 17, 2001 for three units of NDC 00074653301.

155. Attached hereto as Exhibit EV is a true and correct copy of an August 29, 1996 Memorandum from the Washington Department of Social and Health Services Medical Assistance Administration with subject line “Further Clarification of Third-Party Liability Drug Utilization Review and General Point-of-Sale Billing Requirements.” (JDWA001686-96.)

156. Attached hereto as Exhibit EW is a true and correct copy of a listserv e-mail exchange among numerous state Medicaid officials responding to a July 28, 2003 e-mail query by Peggy A. King, R.Ph. of the West Virginia Bureau for Medical Services with subject line “Compounding Fee.” (KYDMSPL_0111755-809.)

157. Attached hereto as Exhibit EX is a true and correct copy of a Notice of Proposed Action to “revises the Maryland Medical Assistance Program's Pharmacy Professional Fee”

promulgated by the Maryland Secretary of Health and Mental Hygiene, effective date “on or about July 1, 1995.” (MD0000113-116.)

158. Attached hereto as Exhibit EY is a true and correct copy of an April 6, 1994 letter from HCFA with subject line “Pricing for Injectable Drugs.” (AWP037-001-001A-02.)

159. Attached hereto as Exhibit EZ is a true and correct copy of a revised pricing array created by Myers & Stauffer for HCPCS code J7050, effective for the fourth quarter of 1999, derived from an array produced by Palmetto.

160. Attached hereto as Exhibit FA is a true and correct copy of a January 11, 2002 report by Jing Xing Technologies, Inc. entitled “Prices Established by Private and Public Sectors for Drugs Also Covered Under Medicare Part B.” (HHD128-0164-85.)

161. Attached hereto as Exhibit FB is a true and correct copy of a pricing array for HCPCS code J7050, effective for the third quarter of 2000, that was produced by Connecticut General. (AWQ005-0631).

162. Attached hereto as Exhibit FC is a true and correct copy of a pricing array for HCPCS code J7050, effective for the third quarter of 2000, produced by Wisconsin Physician Services. (AWQ036-0322).)

163. Attached hereto as Exhibit FD are true and correct copies of five recreated pricing arrays from Myers & Stauffer for HCPCS code J7050 derived from an array produced by Cigna.

164. Attached hereto as Exhibit FE is a true and correct copy of excerpts from the deposition of Jean Veal, 30(b)(6) witness for First Coast Service, successor to Florida Blue Shield, dated March 25, 2008.

165. Attached hereto as Exhibit FF is a true and correct copy of excerpts from the deposition of Deidre Duzor, dated March 26, 2008.

166. Attached hereto as Exhibit FG is a true and correct copy of a May 3, 2008 letter from Department of Justice Attorney George Henderson to Keenan Buoy of Myers & Stauffer, with subject line “In re: Pharmaceutical Industry Average Wholesale Price Litigation, MDL No. 1456, No. 01-12257-PBS (D. Mass.),” and an attached addendum of New York state statutory law. (EXP USABT-DUG 147747-56.)

167. Attached hereto as Exhibit FH is a true and correct copy of a letter sent by Barbara Smith to David Torborg, Eric Gortner, and Neil Merkl on November 12, 2008.

168. Attached hereto as Exhibit FI is a true and correct copy of a letter sent by David Torborg to Barbara Smith on November 19, 2008.

169. Attached hereto as Exhibit FJ is a true and correct copy of excerpts from the December 4, 2008 hearing transcript of proceedings before United States Magistrate Judge Marianne B. Bowler in the above-captioned matter.

170. Attached hereto as Exhibit FK is a true and correct copy of excerpts from the depositions of Michael Sellers dated November 1, 2007 and March 16, 2008.

171. Attached hereto as Exhibit FL is a true and correct copy of excerpts of documents summarizing Alabama Medicaid reimbursement guidelines. (EXP USABT-DUG 068539-47.)

172. Attached hereto as Exhibit FM is a true and correct copy of excerpts of Florida guidelines for reimbursement of prescribed drug claims, dated October 1, 1993. (HHC008-0029.)

173. Attached hereto as Exhibit FN is a true and correct copy of excerpts of documents describing Florida’s reimbursement guidelines for certain time periods. (EXP USABT-DUG 068804-21.)

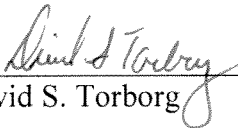
174. Attached hereto as Exhibit FO is a true and correct copy of excerpts of documents summarizing Massachusetts Medicaid reimbursement guidelines. (EXP USABT-DUG 069122-30.)

175. Attached hereto as Exhibit FP is a true and correct copy of excerpts of documents summarizing Rhode Island Medicaid reimbursement guidelines. (EXP USABT-DUG 069586-600.)

176. Attached hereto as Exhibit FQ is a true and correct copy of excerpts from the deposition of Ayuni Hautea-Wimpee, dated November 24, 2008.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 26, 2009 in Washington, District of Columbia.



David S. Torborg

CERTIFICATE OF SERVICE

I, David S. Torborg, an attorney, hereby certify that I caused a true and correct copy of the foregoing DECLARATION OF DAVID S. TORBORG to be served on all counsel of record electronically by causing same to be posted via LexisNexis, this 26th day of June, 2009.

/s David S. Torborg
David S. Torborg